

MF 07-8

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

JOHN DOE

Taxpayer

**Docket # 00-ST-0000
Acct # 00-00000
NTL # 00-000000 0**

RECOMMENDATION FOR DISPOSITION

Appearances: Gary Stutland, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*.

Synopsis:

On February 20, 2007, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe ("taxpayer") for motor fuel use tax. The NTL alleges that on January 19, 2007 the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying decals as required under section 13a.4 of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*) or without a valid single trip permit pursuant to section 13a.5 of the Act. The taxpayer timely protested the NTL. The parties have waived their right to a hearing and requested that this matter be resolved based on the Stipulations that they filed

and the documents that were included with the Stipulations. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On January 19, 2007, the taxpayer was driving a 3 axle tractor motor vehicle that he had leased with an option to purchase from Freedom Funding and Leasing Company ("Freedom Funding"), Macon, Georgia. The taxpayer's destination was Aurora, Colorado. (Stip. #1)
2. On January 19, 2007, the vehicle was owned and registered to Freedom Funding. (Stip. #2)
3. On January 19, 2007, the taxpayer entered Illinois and was traveling on Illinois Highway I-24 when he was stopped and given a written warning for driving a 3 axle commercial motor vehicle upon an Illinois highway without a valid Illinois single trip permit. (Stip. #3)
4. As a result of the incident on January 19, 2007, the taxpayer purchased a single trip permit from the State of Illinois for the sum of \$20. (Stip. #4; Ex. #1)
5. On February 20, 2007, the Department assessed a penalty against the taxpayer in the amount of \$1,000 as a result of the incident as noted in paragraphs 1 through 4. (Stip. #5; Ex. #2)

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Act, which provides in part as follows:

"Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and

decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). The Act defines "commercial motor vehicle" as follows:

"[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds ***, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds ***, except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. ***" (35 ILCS 505/1.16).

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4). Section 13a.6(b) of the Act states that if a commercial motor vehicle is found to be operating in Illinois without a valid motor fuel use tax license and without properly displayed decals or without a valid single trip permit, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the taxpayer was operating a commercial motor vehicle in Illinois without a motor fuel use tax license or single trip permit. The taxpayer contends, however, that the penalty should not be assessed against him because he was not the owner of the vehicle. The taxpayer was leasing the vehicle from Freedom Funding, and he claims that the president of Freedom Funding assured him that the documentation that Freedom Funding provided was accurate. The taxpayer assumed that the information he received was accurate. The taxpayer argues that because this was an isolated incident and he was traveling interstate for the sole purpose of transporting the vehicle back to Colorado, the penalty should be waived.

The Department's regulation concerning licensure of lessors and lessees states as follows:

- a) A lessor regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation to licensees or other lessees may be deemed to be the licensee, and such lessor may be issued a license if an application has been properly filed and approved by the base jurisdiction.
- b) In the case of a carrier using independent contractors under long-term leases (more than 30 days), the lessor and lessee will be given the option of designating which party will report and pay fuel use tax. In the absence of a written agreement or contract, or if the document is silent regarding responsibility for reporting and paying fuel use tax, the lessee will be responsible for reporting and paying fuel use tax. If the lessee (carrier), through a written agreement or contract, assumes responsibility for reporting and paying fuel use taxes, the base jurisdiction for purposes of this Part shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the commercial motor vehicle is registered for vehicle registration purposes by the lessor.
- c) For motor vehicle leases of 30 days or less, the lessor of the motor vehicles under lease will be liable for all requirements of the motor fuel use tax program.
- d) In the case of a household goods carrier using independent contractors, agents, or service representatives, under intermittent leases, the party liable for motor fuel tax shall be:

1) The lessee (carrier) when the commercial motor vehicle is being operated under the lessee's jurisdictional operating authority. The base jurisdiction for purposes of this Part shall be the base jurisdiction of the lessee (carrier), regardless of the jurisdiction in which the commercial motor vehicle is registered for vehicle registration purposes by the lessor or lessee.

2) The lessor (independent contractor, agent, or service representative) when the qualified motor vehicle is being operated under the lessor's jurisdictional operating authority. The base jurisdiction for purposes of this Part shall be the base jurisdiction of the lessor, regardless of the jurisdiction in which the commercial motor vehicle is registered for vehicle registration purposes.

e) For licensees registered under the IFTA, leases shall be made available upon request of the Department or request of any member jurisdiction. 86 Ill. Admin. Code §500.325.

The exhibits included with the Stipulations that were submitted by the parties do not include a copy of the lease agreement; they do include, however, a copy of a document titled “Insurance Addendum to Lease Agreement No. 1009 dated: January 19, 2007.” This document states that it amends and supplements the lease agreement only to the extent as stated therein, and all other terms and conditions stated in the lease remain in effect. The contents of the addendum refer solely to insurance, and nothing in it indicates who is responsible for reporting and paying fuel use tax. The only reference in the Stipulations to the lease is the indication that the taxpayer was driving a vehicle that “he had leased with an option to purchase.” (Stip. #1)

The taxpayer has failed to present sufficient evidence to overcome the Department’s *prima facie* case by showing that the lessor was responsible for obtaining the motor fuel use tax license. Nothing in the exhibits indicates that it was the lessor’s responsibility to obtain the license. In addition, the Act does not contain an exception that allows a waiver of the penalty for any mitigating circumstances. Although the taxpayer may have been unaware of the requirement and corrected the error as soon as possible, he still failed to have the license or permit on the day in question.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tax Liability be upheld.

Linda Olivero
Administrative Law Judge

Enter: July 26, 2007